

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Garbutt v. United Parcel Serv.

131 A.D.3d 444 (N.Y. App. Div. 2015) · No. 2013-08205 · Decided August 5, 2015

SUMMARY

The Appellate Division, Second Department, reversed an order granting the defendants summary judgment in a personal-injury action arising from an automobile accident. The court held that the defendants failed to establish prima facie that Sakhiya Garbutt did not sustain a serious injury, and although they met that burden as to Vince Garbutt, the plaintiffs raised triable issues of fact regarding his alleged spinal injuries.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Thomas A. Dickerson, J.; Robert J. Miller, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	August 5, 2015
DOCKET	2013-08205
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting defendants summary judgment dismissing the personal-injury complaint on the ground that neither plaintiff sustained a serious injury under Insurance Law § 5102(d).
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The moving defendants had the prima facie burden to establish that each plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d); if that burden was met, the plaintiffs had to raise a triable issue of fact.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Vince Garbutt, Sakhiya Garbutt, et al. v. United Parcel Service, et al.

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QUESTIONS PRESENTED

1. Whether defendants established prima facie that Sakhiya Garbutt did not sustain a serious injury under the permanent consequential limitation of use, significant limitation of use, or 90/180-day categories of Insurance Law § 5102(d).
2. Whether plaintiffs raised a triable issue of fact concerning whether Vince Garbutt sustained serious injuries to his cervical and lumbar spine after defendants established a prima facie entitlement to summary judgment.

HOLDINGS

1. Defendants failed to establish prima facie that Sakhiya Garbutt did not sustain a serious injury under the permanent consequential limitation of use, significant limitation of use, or 90/180-day categories of Insurance Law § 5102(d).
2. Although defendants established prima facie that Vince Garbutt did not sustain serious injuries to his cervical and lumbar spine, plaintiffs raised triable issues of fact, precluding summary judgment.

KEY QUOTATIONS

*“Since the defendants did not sustain their prima facie burden in this regard, it is unnecessary to address the sufficiency of the submissions by the plaintiff Sakhiya Garbutt in opposition” (*1)*

*“In opposition, however, the plaintiffs raised triable issues of fact as to whether Vince Garbutt sustained serious injuries to the cervical and lumbar regions of his spine” (*2)*

FACTUAL BACKGROUND

The plaintiffs sought damages for personal injuries arising from a motor-vehicle accident. Sakhiya Garbutt alleged injuries to her cervical and lumbar spine, right shoulder, and left knee, as well as a claim under the 90/180-day category. Vince Garbutt alleged injuries to his cervical and lumbar spine. Defendants submitted medical evidence concerning Vince's alleged spinal injuries, but their submissions did not establish prima facie that Sakhiya lacked serious injuries in the categories asserted.

PROCEDURAL HISTORY

The Supreme Court, Kings County, granted defendants' motion for summary judgment dismissing the complaint. The Appellate Division reversed, holding that defendants failed to establish entitlement to judgment as to Sakhiya Garbutt and, although defendants established a prima facie case as to Vince Garbutt, plaintiffs raised triable issues of fact in opposition.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting defendants summary judgment is reversed, and defendants' motion for summary judgment dismissing the complaint is denied.

CASES CITED

- Toure v. Avis Rent A Car Sys., 98 N.Y.2d 345 (2002)
- Gaddy v. Eyler, 79 N.Y.2d 955 (1992)
- McDonough v. Mulligan, 125 A.D.3d 616, 616 (N.Y. App. Div. 2015)
- Che Hong Kim v. Kossoff, 90 A.D.3d 969, 969 (N.Y. App. Div. 2011)
- Staff v. Yshua, 59 A.D.3d 614, 614 (N.Y. App. Div. 2009)
- Perl v. Meher, 18 N.Y.3d 208, 218-219 (2011)

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